

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 L-03 EB-07 COME-00 TRSE-00 OMB-01 AID-05

CIAE-00 INR-07 NSAE-00 PM-04 NSC-05 SP-02 SS-15 SSO-00

NSCE-00 INRE-00 /060 W

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O R 192330Z AUG 76

FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC IMMEDIATE 1915

INFO AMEMBASSY GUWREMALA

AMEMBASSY MANAGUA

AMEMBASSY SAN JOSE

AMEMBASSY TEGUCIGALPA

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E.O. 11652: N/A

TAGS: EINV, ECON, ES, US

SUBJECT: STATUS OF DRAFT INSURANCE LAW

REFS: (1) SAN SALVADOR 363; (2) STATE 146018; (3) SAN SALVADOR
3509

1. SUMMARY. REPS OF US INSURANCE FIRMS OPERATING IN EL
SALVADOR INDICATED PROVISIONS OF CURRENT DRAFT INSURANCE LAW
UNACCEPTABLE TO THEIR COMPANIES AND PASSAGE IN PRESENT FORM WOULD
PROBABLY FORCE THEM WITHDRAW FROM SALVADORAN MARKET. THEY
PLAN PRESENT PROPOSED CHANGES TO GOES WHICH WOULD MAKE DRAFT
LAW ACCEPTABLE TO THEM. PROPOSED CHANGES ARE ESSENTIALLY
GRANDFATHER CLAUSE PROVISIONS WHICH WOULD PROTECT FIRMS
ALREADY IN MARKET BUT NOT MITIGATE EFFECT OF EXCLUDING
POTENTIAL NEW ENTRANTS. DRAFT NOW IN PRESIDENT'S OFFICE AND
ALLEGEDLY HELD UP BECAUSE OF GOES PREOCCUPATION WITH UPROAR
IN PRIVATE SECTOR OVER ANNOUNCEMENT OF FIRST AGRARIAN REFORM
PROJECT. DELAY PROVIDES OPPORTUNITY FOR FURTHER DEMARCHE
BY EMBASSY, WHICH PROPOSES EMPHASIZE DELETERIOUS EFFECTS
PASSAGE OF LAW WOULD HAVE ON EL SALVADOR'S ATTRACTIVENESS
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TO FOREIGN INVESTORS. INSTRUCTIONS REQUESTED.

2. I MET AUGUST 19 WITH REPRESENTATIVE OF US INSURANCE COMPANIES OPERATING IN EL SALVADOR AND HEARD THEIR VIEWS ON STATUS OF DRAFT INSURANCE LAW.

3. FIRMS REPRESENTED WERE HANOVER INSURANCE COMPANY (CASUALTY INSURANCE) AND THE AMERICAN LIFE INSURANCE COMPANY BOTH OWNED BY AMERICAN INTERNATIONAL UNDERWRITERS OUT OF NEW YORK, AND THE PAN AMERICAN LIFE INSURANCE COMPANY, A MUTUAL COMPANY. THESE FIRMS REPRESENT FROM 10 - 20 PERCENT OF THE LOCAL MARKET. THERE IS ONE OTHER FOREIGN INSURANCE COMPANY OPERATING IN THE COUNTRY, THE ROYAL INSURANCE COMPANY LTD., OF U.K. NATIONALITY.

4. AS COMMUNICATED IN MY TELCON WITH PLATT 8/16 (ARA/CEN) DRAFT LAW HAS NOT BEEN SENT TO ASSEMBLY (SEE REF 3) BUT REPORTEDLY REMAINS IN PRESIDENT'S OFFICE. PAN AMERICAN LIFE INSURANCE REP RELATED THIS ACTION TO CURRENT GOES PREOCCUPATION WITH UPROAR GENERATED IN PRIVATE SECTOR BY ANNOUNCEMENT OF FIRST AGRARIAN REFORM PROJECT.

5. INSURANCE COMPANY REPS CONCURRED THAT PROVISIONS OF CURRENT DRAFT WERE UNACCEPTABLE AND IN PRESENT FORM WOULD PROBABLY RESULT IN THEIR WITHDRAWAL FROM EL SALVADOR. UNDER PROVISIONS OF CURRENT DRAFT THESE COMPANIES WOULD HAVE TO FORM SALVADORAN COMPANIES WITHIN 6 MONTHS AND BRING THEM UP TO 80 PERCENT SALVADORAN EQUITY WITHIN FIVE YEARS OF PASSAGE

OF THE LAW. WHILE U.S. FIRMS HERE ARE WILLING TO FORM SALVADORAN COMPANIES, THEY FIND THE EQUITY REQUIREMENT UNACCEPTABLE. INDEED, HANOVER HAS FORMED SALVADORAN COMPANY. REPS STATED THAT A NEW COMPANY FORMED IN COMPLIANCE WITH THE LEGISLATION WOULD NOT BE PROFITABLE DURING INITIAL YEARS OF OPERATION AND THAT THEY WOULD BE UNABLE TO SELL SUCH LARGE PERCENTAGE OF SHARES IN THE COMPANY WITHIN THE TIME REQUIRED BY THE LEGISLATION. THEY REGARD THE PROVISIONS OF THE DRAFT LAW AS A MEANS OF FORCING FOREIGN FIRMS FROM THE MARKET.

6. U.S. FIRMS IN FACT HAVE BEEN ATTEMPTING TO INFLUENCE DRAFTING OF LAW AND ARE NOW PROPOSING TO GOES CHANGES IN LIMITED OFFICIAL USE

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DRAFT LAW WHICH WOULD MAKE IT ACCEPTABLE TO THEM. THEY HAVE PREPARED THREE PROPOSALS, PRESUMABLY FOR PRESENTATION TO LOCAL AUTHORITIES:

A. A GENERAL "GRANDFATHER CLAUSE" WHICH WOULD STATE THAT

REGARDLESS OF THE PROVISIONS OF ARTICLE 1 OF THE DRAFT LAW, BRANCHES AND AGENCIES OF FOREIGN COMPANIES OPERATING

IN EL SALVADOR AT THE TIME THE LAW GOES INTO EFFECT SHALL
BE ABLE TO CONTINUE OPERATING IN THE AREAS IN WHICH THEY
ARE CURRENTLY AUTHORIZED.

B. A NEW ARTICLE 88 WHICH WOULD STATE THAT SALVADORAN
FIRMS WITH A CAPITAL STRUCTURE DIFFERENT THAN THAT REQUIRED
BY ART. 13 (80 PERCENT SALVADORAN, 20 PERCENT FOREIGN) WILL HAVE
THE RIGHT TO PRESERVE THE CAPITAL STRUCTURE ORIGINALLY AUTHORIZED,
PROVIDED THAT, WHEN THEY SELL, THEY COULD SELL SHARES ONLY
TO PERSONS AUTHORIZED TO ACQUIRE THEM UNDER ART. 13. THIS
PROVISION WOULD COVER HANOVER'S SALVADORAN COMPANY.

C. A NEW ART. 93 WHICH WOULD SPECIFY THAT FOREIGN LIFE
INSURANCE "ENTITIES" WITH BRANCHES OR AGENCIES IN EL SALVADOR
AT THE TIME OF ENACTMENT OF THE LAW WOULD BE AUTHORIZED
TO FORM SALVADORAN JOINT STOCK COMPANIES AND BE THE SOLE
OWNERS OF SUCH COMPANIES, PROVIDED THAT THEY COULD TRANSFER
SHARES IN SUCH COMPANIES ONLY TO PERSONS AUTHORIZED TO
ACQUIRE THEM UNDER ART. 13. THIS PROVISION WOULD COVER
THE CASE OF PAN AMERICAN LIFE INSURANCE CO., A
MUTUAL LIFE INSURANCE COMPANY, WHICH WOULD THEN FORM A
STOCK COMPANY.

7. THESE AMERICAN INSURANCE FIRMS ATTEMPTED UNSUCCESSFULLY
TO GET GRANDFATHER CLAUSE INSERTED IN EARLIER VERSION OF
DRAFT LAW (REF. 1). AT THAT TIME, LOCAL REPS, BASED ON
CONTACTS WITH HIGH LEVEL GOES OFFICIALS, WERE RELATIVELY
OPTIMISTIC LAW COULD BE SIDETRACKED OR MODIFIED TO BE ACCEP-
TABLE TO THEM. TOUGHENING OF ART. 13 EQUITY PROVISION AS
LAW AND EVIDENCE IT INDEED PROCEEDING THROUGH GOES BUREAU-
CRACY APPEARS TO HAVE EVAPORATED THIS OPTIMISM AND PRODUCED
STRONG REPRESENTATIONS IN WASHINGTON.

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ACTION ARA-10

INFO OCT-01 ISO-00 L-03 EB-07 COME-00 TRSE-00 OMB-01 AID-05

CIAE-00 INR-07 NSAE-00 PM-04 NSC-05 SP-02 SS-15 SSO-00

NSCE-00 INRE-00 /060 W

----- 056520

O R 192330Z AUG 76

FM AMEMBASSY SAN SALVADOR
TO SECSTATE WASHDC IMMEDIATE 1916
INFO AMEMBASSY GUATEMALA
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RUESTEXAMEMBASSY TEGUCIGALPA 3961

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8. LOCAL SALVADORAN FIRMS REPORTEDLY ARE DISSATISFIED WITH CURRENT DRAFT BECAUSE OF RESTRICTIONS ON INTERLOCKING DIRECTORATES, AND ON REINSURANCE PROCEDURES, BUT ACCORDING THESE CONTACTS, WELCOME PROVISIONS RESTRICTING FOREIGN COMPETITION.

9. WHILE THESE AMENDMENTS TO THE LAW WOULD PROTECT FOREIGN LIFE INSURANCE COMPANIES CURRENTLY OPERATING IN EL SALVADOR, PASSAGE OF THE LAW EVEN WITH THESE PROPOSED AMENDMENTS WOULD VIRTUALLY PREVENT THE ENTRY OF NEW FOREIGN FIRMS INTO THE MARKET.

10. DRAFT LAW'S RETURN TO MINISTRY OF ECONOMY PROVIDES OPPORTUNITY FOR FURTHER DEMARCHE BY EMBASSY. SUBJECT TO DEPARTMENT APPROVAL, WE RECOMMEND SUCH DEMARCHE AND WOULD MAKE FOLLOWING POINTS:

(A) WHILE THE CURRENT DRAFT LAW IS MORE MODERATE THAN ITS PREDECESSOR IN TERMS OF IMPLEMENTATION (UNDER ART. 92, FOREIGN INSURANCE FIRMS ARE GIVEN A PERIOD OF 6 MONTHS TO COMPLY RATHER THAN IMMEDIATE CESSATION OF OPERATIONS)
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THE DEGREE OF DIVESTMENT IS FAR MORE SEVERE, JUMPING FROM 60 PERCENT TO 80 PERCENT (ART. 13).

(B) TO THE EMBASSY'S KNOWLEDGE THE DIVESTMENT PROVISIONS ARE OSTENSIBLY AIMED AT INCREASING THE MARKET SHARE OF NATIONAL INSURANCE FIRMS AT THE EXPENSE OF FOREIGN FIRMS, INASMUCH AS NO ALLEGATIONS OF IMPROPRIETY OR BAD SERVICES HAVE BEEN LEVELLED AGAINST FOREIGN INSURANCE FIRMS REGISTERED TO DO BUSINESS IN EL SALVADO. FURTHER, PRESENT OF FOREIGN INSURANCE FIRMS BENEFITS EL SALVADOR BY INTRODUCING ELEMENT OF COMPETITION AND INNOVATION, I.E., GROUP PLAN RECENTLY INTRODUCED BY PAN AMERICAN LIFE INSURANCE COMPANY BENEFITING LARGE NUMBER OF LOW INCOME PERSONS.

(C) THUS IN CONTRAST TO PREVAILING FAVORABLE ATTITUDE OF THE GOES TOWARD FOREIGN DIRECT INVESTMENT, IN GENERAL, POTENTIAL NEW INVESTORS MUST NOW DECIDE IF THIS APPARENT

DEVIATION FROM POLICY IS LIMITED AND TEMPORARY OR IS
INDICATIVE OF A TREND TOWARD GREATER RESTRICTION?

(D) BASED UPON THE WELL-DOCUMENTED SENSITIVITY AND CONSER-
VATISM OF FOREIGN DIRECT INVESTMENT, THE EMBASSY FEELS THAT
PASSAGE OF THE DIRECT INSURANCE LAW IN ITS PRESENT FORM WILL
REPRESENT A SERIOUS SETBACK IN TERMS OF ATTRACTING NEW U.S.
INVESTMENT.

11. REQUEST GUIDANCE, ESPECIALLY WITH REGARD TO IMPLICATIONS
UNDER SEC 301 OF TRADE ACT OF PASSAGE OF DRAFT LAW IN PRESENT
FORM.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INSURANCE, LAW, DEMARCHE, BUSINESS FIRMS, LEGISLATIVE BILLS, PUBLIC ATTITUDES, GOVERNMENT REACTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ElyME
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976SANSAS03777
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760319-0049
From: SAN SALVADOR
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760838/aaaabgqz.tel
Line Count: 236
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 SAN SALVADOR 363, 76 STATE 146018
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 16 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 JUL 2004 by izenbei0>; APPROVED <27 OCT 2004 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: STATUS OF DRAFT INSURANCE LAW
TAGS: EINV, ECON, ES, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006